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FAX: 619.238.1398

Attorney for Plaintiff,
PATRICK M. SAVAGE

FILED
08 JUN 30 PM 1:00
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [signature] DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PATRICK M. SAVAGE, an individual Plaintiff, vs. JOSEPH GIBILTERRA, an individual; MAUREEN GIBILTERRA, an individual; and THE J&M TRUST DTD 12/23/03, Defendants.	CASE NO. '08 CV 1159 JAH POR COMPLAINT FOR: 1. MONEY HAD & RECEIVED 2. MONEY LENT

PATRICK M. SAVAGE (hereafter "Plaintiff"), alleges as follows:

PARTIES

1. Plaintiff is a citizen of the State of California and resides at 11146 Watherwood Terr., San Diego, CA 92131, in the City and County of San Diego, in that state.

2. Defendant, JOSEPH GIBILTERRA, (hereafter collectively "Defendant(s)"), is a citizen of the State of Nevada and resides in the City of Henderson, County of Clark, in that state.

3. Defendant, MAUREEN GIBILTERRA, (hereafter collectively "Defendant(s)"), is a citizen of the State of Nevada and resides in City of Henderson, in the County of Clark, in that state.

/./

CR

4. Defendant, THE J&M TRUST DTD 12/23/03, (hereafter collectively "Defendant(s)"), on information and belief, is a living trust formed under the laws of the State of Nevada and with its principal business location in City of Henderson, in the County of Clark, in that state.

JURISDICTION

5. This Court has jurisdiction over the parties and matter as a diversity action pursuant to 28 U.S.C. §1332 and the General Orders of the United States District Court for the Southern District of California and the amount in controversy, without interest and costs, exceeds the sum or value specified in to 28 U.S.C. §1332.

VENUE

6. Venue for this action is proper pursuant to 28 U.S.C. §1391(a)(2) in that a substantial part of the events and/or omissions giving rise to the Plaintiff's claims, as alleged herein, occurred within the judicial district for the United States District Court for the Southern District of California.

GENERAL ALLEGATIONS

7. On or about May of 2006, Defendants approached Plaintiff by contacting him at his home and business which are located in San Diego, California and requested that he provide them with a portion of the funds necessary for their acquisition of a real estate investment project.

8. On May 3, 2006, Plaintiff was in the process of selling certain real property that he owned in the State of California. As part of that sales transaction, Plaintiff had opened an escrow with Elite Escrow located in San Diego, California. Out of the sales proceeds that were received by Plaintiff from the sale of his real property, he caused the amount of $90,000.00 to be wired transferred directly out of the escrow at Elite Escrow at the request and direction of the Defendants to their bank account at Community Bank of Nevada in the name of their solely owned living trust know as THE J&M TRUST DTD 12/23/03. A true and correct copy of the wire transfer request and confirmation for the $90,000.00 sent to Defendants is attached hereto as Exhibit "A" and incorporated herein reference.

/././

9. On May 23, 2008, Plaintiff also caused the amount of $25,000.00 to be sent by personal check, which was drawn on his bank located in San Diego, California, to the Defendants at their request and direction and the check was made payable in the name of their solely owned living trust know as THE J&M TRUST DTD 12/23/03. On or about April 7, 2006, the Plaintiff's personal check in the amount of $25,000.00 was endorsed by MAUREEN GIBILTERRA and deposited into an account at the Bank of Nevada. A true and correct copy of Plaintiff's personal check (No. 101) in the amount of $25,000.00 sent to Defendants is attached hereto as Exhibit "B" and incorporated herein reference.

FIRST CLAIM FOR RELIEF
(Money Had and Received)

10. Plaintiff incorporates herein by reference Paragraphs 1 through 9, inclusive, as though set forth in full herein.

11. Within the last four years, at San Diego, California, Defendants became indebted to Plaintiff in the sum of $115,000.00 for money had and received by Defendants for the use and benefit of Plaintiff.

12. Plaintiff has repeatedly demanded payment from Defendants. The last demand was made on or about February 29, 2008.

13. Neither the whole nor any part of this sum has been paid by Defendants to Plaintiff, and there is now due and owing the sum of $115,000.00, with interest on that amount at the legal rate per year, from May 23, 2006 to present.

SECOND CLAIM FOR RELIEF
(Money Lent)

14. Plaintiff incorporates herein by reference Paragraphs 1 through 9, inclusive, as though set forth in full herein.

15. Within the last four years, at San Diego, California, Defendants became indebted to Plaintiff in the sum of $115,000.00 for money lent by Plaintiff to Defendants at their direction and request.

16. Plaintiff has repeatedly demanded payment from Defendants. The last demand was made on or about February 29, 2008.

17. Neither the whole nor any part of this sum has been paid by Defendants to Plaintiff, and there is now due and owing the sum of $115,000.00, with interest on that amount at the legal rate per year, from May 23, 2006 to present.

WHEREFORE, the Plaintiff prays for judgment as follows:

18. For the principal sum of $115,000.00, with interest on that amount at the legal rate per year, from May 23, 2006 to present;

19. For attorney's fees (as permitted by law or statue) and the costs of suit incurred herein; and

20. For such other and further relief as this court deems just and proper.

DATED: June 26, 2008

LAW OFFICE OF GEOFFREY E. MARR

By: ____________________
GEOFFREY E. MARR
Attorney for Plaintiff

EXHIBIT A

Elite Escrow Services of San Diego

4725 Mercury Street #100
San Diego, CA 92111

(858) 560-4781 or (858) 277-9851
Fax: (858) 560-9287 or (858) 279-8079

Chana M. Roberts
Escrow Officer

Date: May 3, 2006
Escrow No.: 040614-CR

GENERAL - ADDITIONAL INSTRUCTIONS

Property Address: 427 9th Avenue #206 San Diego, CA 92101

THE ABOVE NUMBERED ESCROW IS HEREBY AMENDED AND/OR SUPPLEMENTED AS FOLLOWS:

PROCEEDS LETTER - Seller

Proceeds due to the SELLER(S) at close of escrow shall be disbursed as follows:
(Please check)

AMOUNT OF PROCEEDS TO BE WIRED $ 90,000 -

✓ I would like to pick up **BALANCE OF proceeds in the form of a check** at Elite Escrow Services of San Diego, Inc. Please call me at this number when my check is ready:

(858) 449 -6001

_____ At the close of escrow, escrow holder is hereby authorized and instructed to wire transfer the NET PROCEEDS due the undersigned SELLER(S) as follows:

Bank Name: Community Bank of Nevada

Bank Street Address: Green Valley Office

Bank Phone#: 702-948-2418 Bank Fax #: ____

Bank Routing/ABA Number: 122401794

for the account of: $ 90,000.00

Account Number: 40100 4945

additional information: The J & M Trust DTD

Escrow holder is not liable for the Receiving Bank's receipt, posting, clerical errors, or any interest on funds while in transit through the Federal Reserve that may be lost as a result of delay or mishandling of wire. Your only responsibility is to instruct you bank to wire funds as called for above. The undersigned is aware that the proceeds may be wired no later than the 2nd business day following the close of escrow, SUBJECT TO escrow holder's receipt of monies from title company in this transaction (refer to ***General Provisions*** in original instructions entitled "Disbursement of Funds" for complete information) You are further authorized and instructed to charge the account of the undersigned with the sum of $25.00 for each outgoing wire issued in accordance with these instructions.

ALL OTHER TERMS AND CONDITIONS TO REMAIN THE SAME.

[signature]
Patrick Savage

WIRING INSTRUCTIONS

COMMUNITY BANK OF NEVADA
Green Valley Office
(702) 948-2418

Routing No.
122401794

Account Name:
THE J& M TRUST DTD 12/23/03

Account No:
401004945

PATRICK M SAVAGE
11146 WATHERWOOD TERR.
SAN DIEGO, CA 92131

101

90-7172/3222 77
040030764092

3-22-2006
Date

Pay to the Order of J & M TRUST $ 25,000

Twenty Five Thousand ——— Dollars

citibank CITIGOLD

For Deposit on Kelowna...

⑆322271724⑆ 040030764092⑈ 0101 ⑈0002500000⑈

0421646950 04102006
Cyc= Bulk=
LA PROCESSED 002

04102006

2521481708

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152409 - MB

June 30, 2008
13:00:42

Civ Fil Non-Pris
USAO #.: 08CV1159 CIVIL FILING
Judge..: JOHN A HOUSTON
Amount.: $350.00 CK
Check#.: BC2341

Total-> $350.00

FROM: PATRICK M SAVAGE VS
JOSEPH GIBILTERRA, MAUREEN
GIBILTERRA, ET AL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 08 JUN 30 PM 12:18

I. (a) PLAINTIFFS
PATRICK M. SAVAGE, an individual

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Geoffrey E. Marr, LAW OFFICES OF GEOFFREY E. MARR, 550 West "C" Street, Suite 700, San Diego, CA 92101

DEFENDANTS
JOSEPH GIBILTERRA, an individual; MAUREEN GIBILTERRA, an individual; and THE J&M

County of Residence of First Listed Defendant: Clark County
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

BY: DEPUTY

Attorneys (If Known)

'08 CV 1159 JAH POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
28 U.S.C. §1332
Brief description of cause:
Complaint for money had and received/money lent

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 06/27/2008
SIGNATURE OF ATTORNEY OF RECORD: [signature]

FOR OFFICE USE ONLY
RECEIPT # 152409 AMOUNT $350.00 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______
PB 06/30/08

CR